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IN THE

Supreme Court of the United States

October Term,

No. _____

JAMES L. PICKERING,
Petitioner-Appellant,

v.

CITY OF BUFFALO, NEW YORK,
Respondent-Appellee.

JURISDICTIONAL STATEMENT

JAMES L. PICKERING, *Pro Se*
Petitioner-Appellant
Hand Road
Chaffee, New York 14030

QUESTIONS PRESENTED

1. In considering "Bodie V. Cincinatti" 97 S. Ct. 780 was the application of Rule 38 of the Federal rules of appellate procedure constitutionally an invalid application since the petitioner raised three issues of constitutionally protected rights?
2. In considering "Bodie V. Cincinatti" 97 S. Ct. 780 was the application of 42 United States Code §1988, by the District Court WDNY, constitutionally an invalid application since the petitioner raised three issues of constitutionally protected rights?
3. In considering "Menonite Board of Missions V. Richard C. Adams" (1983) (Docket # unknown) and, "Re Choates" (1961) 82 Sct. 147 was the non ser-

vise of process in the Erie County Court Proceeding which resulted in the advertisement for sale by public auction Dtd. Oct. 20, 1981 a violation of the Due Process Clause of Ammendment XIV?

4. Where the court below in 80-7768 (Jan. 20, 1981) did not address the issue of non service of process which occurred in Erie County Court (Q-3 above) subsequent to Jan. 20, 1981, was there an error?
5. After having lost it's attempt to collect demolition charges in Buffalo City Court 79-0118 and not appealed therefrom was appellant placed in civil double jeopardy by defendants per suit of a collateral suit in Erie County Court without notice and in violation of Ammendment IX of the

Constitution of the United States?

6. Was it a second violation of Amendment XIV to take without notice petitioners property in Erie County Court, sell that same property and not pay petitioner for it?

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CASES CITED

Bodie v Cincinnati 97 S Ct 780..	Q1,2
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Pickering v City of Buffalo 80-7768(2nd Cir)	Q4
City of Buffalo v Pickering 79-0118 (City Court of Buffalo)..	Q5

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1983

No.....

JAMES L. PICKERING
Petitioner-Appellant,

V.

CITY OF BUFFALO, NEW YORK
Respondent-Appellee.

On Appeal From the Second Circuit
Court of Appeals

Jurisdictional Statement

Appellant/Petitioner appeals from the Court of Appeals for the Second Circuit on appeal from the District Court for the Western District of New York of the informal opinion and order entered in the Court of Appeals on the Fifth day of January, 1984. This statement is submitted to show that the Supreme Court of the United States has jurisdiction under Article III Section 2 of the Constitution of the United States and that the questions are substantial as violations of Title 42 Section 1983 U.S.C. Notice of Appeal was filed in the Second Circuit on January 30 1984 or thereabouts by certified mail Number P534086402.

OPINION BELOW

The opinion of the Circuit Court of Appeals is appended on Page 12.

The opinion of the District Court for the Western District of New York is appended on Page 17.

STATEMENT

A Pro Se petition was filed in the United States District Court for the Western District of New York alleging a violation of Ammendment IX of the Constitution of the United States to with: CIVIL DOUBLE JEOPARDY, by the collateral persuit of demolition charges by Defendent, City of Buffalo in Erie County Court (E68065 30th Sept. 1981 in Rem #13) WITHOUT NOTICE after it had lost and not appealed a civil decision and judgement involving those same demolition charges in Buffalo City Court (79-0118). The Petition alleged also a violation of Ammendment XIV for NON SERVICE OF PROCESS (Notice) In Erie County Court (E68065 30th Sept.1981)

An Ammended Petition cited Section 1983 of Title 42 U.S.C. as jurisdiction and an additional violation of Ammendment XIV of the Constitution of the United States brought about by the NON PAYMENT FOR THE SEIZED PROPERTY, jurisdiction was cited 28 U.S.C. 1331, 1343.

Both the District Court and the Court of Appeals construed the issue to be sewer rent, when the issues raised were CIVIL DOUBLE JEOPARDY, NON SERVICE OF NOTICE and THE TAKING OF PROPERTY WITHOUT PAYMENT. Defendant has not denied non service of process or taking of property.

QUESTIONS ARE SUBSTANTIAL

Question presented in #1 chills the assertion of Constitutional rights.

Question presented in #2 also chills the assertion of Constitutional rights.

Question presented in #3 sets forth an abridgement of a Constitutional right.

Question presented in #4 sets forth judgement before occurrence of fact.

Question presented in #5 is Civil Double Jeopardy which has never been adjudicated.

Question presented in #6 also sets forth an abridgement of a Constitutional right.

Each of the six questions require Jury determination of facts since plenary consideration has not yet been accomplished.

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Respectfully submitted,

/S/ James L. Pickering

James L. Pickering
4-4-84

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

James L. Pickering

Notice of Exception

Plaintiff/Appellant

and

VS

Appeal

City of Buffalo

Defendent/Appellee

Appellant in this action hereby serves notice of exception from the judgement and affirmation and order issued by the Second Circuit in this action to the Supreme Court of the United States on the following grounds.

1. The order of facts as cited and law as cited is mistated to give credence

to the affirmation.

2. The court failed to address the three Constitutional issues placed before it.

3. There is no case law cited which gives the Court power to assess attorney's fees and or damages when an issue of the Constitutional Law is cited. Plaintiff has set forth three distinct Constitutional issues which were not addressed.

4. The application of Rule 38 tends to chill the assertion of a Constitutional right and is therefore unconstitutional.

5. There are several recent Supreme Court decisions (1980) which declare unconstitutional laws designed to chill the assertion of Constitutional rights.

Chaffin V. Syynohcombe 93 S. Ct.
1977 (U.S. District of Columbia 1969)

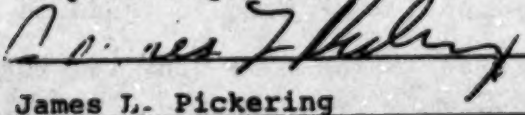
Harris V. McRae 100 S. Ct. 2671 (1980)

City of Mobile Alabama V. Bolden
100 S. Ct. 1490

Sharpio V. Thompson 89 S. Ct. 1322 (1969)

Bodie V. Connecticut 97 S. Ct. 780

Respectfully Submitted

A handwritten signature in dark ink, appearing to read "James L. Pickering", is written over a horizontal line.

James L. Pickering

Sworn to before me this

20 th Day of Jan 1984

Robert A. Salmer

Notary Public State of New York

Qualified in ERIE County

My Commission expires 1995

Clinton A. Salmer, Notary Public,
State of New York, Erie County,
Commission expires March 20, 1995


P 534 086 403

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1962
* U.S.G.P.O. 1963-403-617

Sent to <i>J.C. Vancotter Laiden</i>	
Street and No. <i>CITY HALL</i>	
P.O. State and ZIP Code <i>Buffalo NY 14202</i>	
Postage	\$ <i>20</i>
Certified Fee	<i>75</i>
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	<i>60</i>
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ <i>1.55</i>
Postmark or Date 	


P 534.086.402

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1962
* U.S.G.P.O. 1963-403-617

Sent to <i>CHURCH ST. OFFICE</i>	
Street and No. <i>CHURCH ST.</i>	
P.O. State and ZIP Code <i>NY 10007</i>	
Postage	\$ <i>20</i>
Certified Fee	<i>75</i>
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	<i>60</i>
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ <i>1.55</i>
Postmark or Date 	

PS Form 3800, Feb. 1962

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United
States Court of Appeals for the
Second Circuit held at the United
States Courthouse in the City of
New York on the fifth day of Janua-
ry, one thousand nine hundred and
eighty four.

Present: Honorable Jon O. Newman
 Honorable Ralph K Winter
 Circuit Judges
 Honorable Lloyd F. MacMahon
 District Judge*

James L. Pickering

Plaintiff-Appellee

V

City of Buffalo

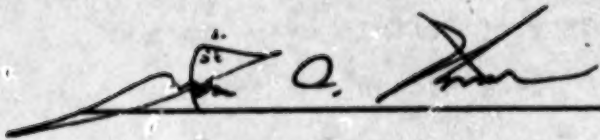
Defendent-Appellee

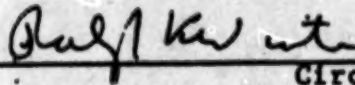
James L Pickering appeals pro se from the April 8, 1983 judgement of the District Court for the Western District of New York (John T. Curtin, Chief Judge) dismissing his complaint against the City of Buffalo. Despite repeated adverse rulings in state and Federal Courts, see Pickering V. City of Buffalo, No 80-7768 (2d Cir. Jan. 20, 1981), Pickering persists in filing additional lawsuits challenging the actions of the City in foreclosing upon his property for non payment of sewer assessment.

The foreclosure has long since occurred the structure on the property has been demolished, and the property transferred to an unidentified third party. The lawfulness of these actions has previously been adjudicated. Pickering appears unable to accept the fact that his controversy

with the City of Buffalo over his non-payment of sewer assessment is at an end. His claims have previously been ruled innsufficient as a matter of law, and he is not entitled to a jury trial on such claims. It is clear that sanctions are warranted to deter Pickering from continuing his harassing and baseless litigation.

The judgement is affirmed, and pursuant to Rule 38 of the Federal Rules of Appellate Procedure, Pickering is ordered to pay the appellee double costs plus damages for delay in the amount of \$500.00 representing partial payment of attorney's fees incurred in resisting this appeal.





Circuit Judges.

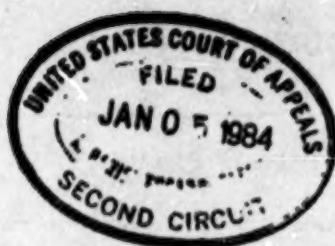


District Judge.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

*Of the United States District Court for the Southern District of New York, sitting by designation.

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83-7376

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

James L. Pickering, Plaintiff

Vs.

CIV-82-94C

City of Buffalo, Defendant

Plaintiff's original action was filed pro se. This court dismissed the action but granted leave to file an amended complaint which might frame a viable constitutional claim. Pickering V City of Buffalo, Civ 82-94 (W.D.N.Y. September 14, 1982) (order dismissing with leave to renew)

Plaintiff has filed an amended complaint with the assistance of counsel. He seeks relief pursuant to 28 U.S.C. §1983 in challenging the constitutionality of sewer tax assessment upon property he no longer owns. His ownership ended at a

foreclosure sale in 1981, initiated by his non-payment of that tax.

Mr. Pickering has already addressed the propriety the sewer rents in both State Supreme Court and the Appellate Division of the New York State Supreme Court in 1981 (Docket Item 9). Mr. Pickering may not renew the same issue in Federal Constitutional terms.

Although Honorable Joseph J. Ricotta's order in state court dismisses on procedural grounds, Mr. Pickering did present his case on the merits. More importantly this court recognizes that an action in State Court for declaratory relief is proper for a constitutional contest of a controlling statute. Aubin V. Biggane, 381 N.Y.S. 2d 533 (1976): Saccolio V Cagliostro 50 A.D. 2d 875 (1975), aff'd 397 N.Y.S. 2d

791 (1977).

Furthermore, both statute and case law preclude this court from interfering with state tax assessments. 28 U.S.C. §1341 Rosewell V. LaSalle National Bank 450 U.S. 503 (1981); see also Friarton Estates Corp. V City of New York, 525 F. rev'd on other grounds, 681 F 2d 150 (2d Cir. 1982). Under Rosewell, Mr Pickering has an available state court remedy which precludes this court's involvement.

Finally, the plaintiff's amended complaint asks that the City of Buffalo restore ownership to Mr. Pickering. Such relief is entirely outside the realm of possibility, for the tax foreclosure sale vested ownership in some unidentified third party. Mr. Pickering has not even named the owner of the property in this action.

It appears that the plaintiff has pursued this claim for the purpose of harassment, for it is obvious that this court is powerless to interfere in proceedings which have already received generous judicial attention. This includes the Second Circuit affirmation of a decision by Honorable John T. Elfin validating subsection of Mr. Pickering's City property to City regulation. Pickering V. City of Buffalo CIV 78-164m slip op at 6 (W.D. N. Y. 1980), aff'd No. 80-7768, slip op (2d Cir. January 20, 1981) (dismissing plaintiff's section 1983 claim seeking freedom from City property regulation).

42 U.S.C. § 1988 provides for attorney's fees to the defendant in cases that pose meritless claims. Harbulak V County of Suffolk 654 F. 2d 194, 198, (2d Cir 1981)

It appears that Mr. Pickering may have advance such a claim accordingly defendant's counsel may supply this court with the necessary affidavits and motion papers to support a claim for attorney's fees pursuant to section 1988. If defendant desires, this motion shall be filed by May 5, 1983. Plaintiff will be given an opportunity to respond.

Plaintiff's amended complaint is dismissed.



JOHN T. CURTIN
United States District Judge

Dated: April 7, 1983